IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.96 OF 2003

M/s.Metropolitan Trading Company .. Appellant.
V/s.
The Commissioner of Income-tax
Mumbai City IX, Mumbai .. Respondent.

Ms.Vasanti Patel for the appellant.

Mr.R.V. Desai, Senior counsel with V.H. Kantharia i/b. P. Kapur for the respondent.

CORAM : R.M. LODHA, &
J.P. DEVADHAR, JJ.

DATED : 21ST SEPTEMBER, 2004.

P.C. :

Heard Ms.Vasanti Patel, the learned counsel for the appellant-assessee.

2. The Income Tax Appellate Tribunal in its order observed thus :

> "12. In the present case before us, while framing the assessment u/s.143(3), the AO was seized with the matter of computing deduction admissible to the assessee under the relevant provisions of Sec. 80HHC of the IT Act. While doing so, the AO completely ignored the fact that the assessee received supervision charges of Rs.1,46,38,373/-. There was no application of mind on the part of the AO to the nature of treatment u/s.80HHC of the aforesaid receipt. The AO did not consider at all as to whether or not the provisions of clause (baa) of the

> Explanation to Sec.80HHC(4B) would be applicable. Adjustments were made on account of certain other items of income which caused grievance to the assessee and therefore such issues were made subject matter of appeal. Obviously, while deciding the appeal, the learned CIT(A) had no occasion to consider the implications for the purposes of Sec.80HHC of the Supervision Charges of Rs.1,46,38,373/-. Thus, this specific aspect, issue or matter, whatever nomenclature is applied, was neither considered nor decided by the learned CIT(A) within the meaning of clause (c) of the Explanation to sec. 263(1)."

3. We do not find any legal infirmity in the order of the Tribunal.

4. The judgment of the Calcutta High Court in the case of Oil India Limited V/s. Commissioner of Income-tax, Central-II, Calcutta [138 ITR 836] referred to by the learned counsel for the assessee has no application in the light of the amendment in clause (c) of the explanation appended to Section 263 (1) by way of Finance Act, 1989 with retrospective effect from 1st June, 1988.

5. No substantial question of law arises in this appeal. The appeal is dismissed in limine.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)